

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>GARET GILES,</b>	§	
	§	
<b>Plaintiff,</b>	§	
<b>v.</b>	§	<b>CIVIL ACTION NO.</b>
	§	
<b>BANK OF AMERICA, N.A.,</b>	§	<b>SA-11-CV-1035 OG (NN)</b>
	§	
<b>Defendant.</b>	§	

**ORDER STRIKING THIRD AMENDED COMPLAINT AND RESPONSE TO  
MOTION TO DISMISS**

This order addresses plaintiff Garett Giles's recent filings (docket entries 18 and 19).

Giles filed his third amended complaint in response to defendant Bank of America's motion to dismiss the second amended complaint.<sup>1</sup> The scheduling order provides that "parties shall file all motions to amend or supplement pleadings"<sup>2</sup> by March 23, 2012. Although that deadline has not passed, Giles did not file a motion for leave to amend his complaint and thus failed to comply with the scheduling order. Because Giles did not comply with the scheduling order, I strike Giles's third amended

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<sup>1</sup>Docket entry # 18, ¶ 1 (stating in response to the defendant's motion to dismiss the second amended complaint that "the Third Amended Complaint does have some additional briefing related to the UCC claims).

<sup>2</sup>Docket entry # 7.

complaint.

I also observe that plaintiff's response to defendant's third motion to dismiss and his amended complaint did not conform to this district's rule concerning proof of service. Plaintiff's certificate of service states that service was accomplished in compliance with the Texas rules of procedure.

Local Rule CV5 provides as follows:

**(b) Proof of Service.**

(1) **Electronic.** Pursuant to Section 15(a) of the Electronic Filing Procedures, the Notice of Electronic Filing ("NEF") generated by the court's electronic filing system constitutes service of the document on those registered as Filing Users. Proof of service shall be provided as set out in Section 15(c) of the Electronic Filing Procedures.

(2) **Traditional.** All documents presented for traditional filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and the manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on, or be affixed to the documents filed. The clerk may permit documents to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

Section 15(c) of the Administrative Policies and Procedures for Electronic Filing

(<http://www.txwd.uscourts.gov/ecf/docs/efileprocd.pdf>) provides:

A certificate of service must be included with all filed documents reflecting that service on known Filing Users will be accomplished through the NEF and indicating the manner of service on any party who is not a Filing User. **For sample language to use in the certificate of service, see Exhibit 1.** (emphasis added)

Future submissions should conform to this guidance or they will be stricken.

Accordingly, the clerk of the court shall STRIKE the third amended complaint (docket entry # 19) and plaintiff's response to defendant's third motion to dismiss (docket entry # 18) from the docket entries for this case.

In the interests of justice the time for plaintiff to file his response to the motion to dismiss is extended until **February 22, 2012**.

**SIGNED** on February 15, 2012.

A handwritten signature in black ink, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK  
UNITED STATES MAGISTRATE JUDGE